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In re Application of
Paul A. Monte, Wing-Po Yung and
Robert Wiedeman
Application No. 09/680,227
Filed: October 6, 2000
Title: SPREAD SPECTRUM CODE
DIVISION ACCESS (SS-CDDA) FOR
SATELLITE COMMUNICATION SYSTEM WITH:
DISTRIBUTED GATEWAYS

DECISION ACCORDING STATUS
UNDER 37 C.F.R. §1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed October 6, 2000, and supplemented by facsimile transmission on January 26, 2001.

The petition under 37 C.F.R. 1.47(a) is **GRANTED**.

The above-identified application was filed on October 6, 2000, with a declaration signed by joint inventors Paul A. Monte and Robert Wiedeman, on behalf of non-signing inventor Wing-Po Yung. A petition for status under 1.47(a) accompanied this declaration. Applicant asserts that this status is proper because joint inventor Yung refuses to join in the application for patent.

On December 7, 2000, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration with surcharge for late filing. A partially signed declaration with a petition (and fee) under 1.47 serves to avoid abandonment of the application for failure to reply to the Notice, and if the petition is grantable, satisfies the requirement for an executed declaration. Moreover, as both the declaration and the petition under 1.47 were filed on the filing date of the application, no surcharge for late filing under 1.16(e) is due. The only issue remaining is whether the petition is grantable.

A grantable petition under 37 C.F.R. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application after having been presented with the application papers. The affidavit of Joseph V. Gamberdell, Jr., established that the inventor was mailed the application papers, including the specification, claims and drawings, but failed to respond to the request that he

sign the declaration. Attorney Gamberdell specifically declares that in a conversation with the inventor on September 22, 2000, inventor Yung acknowledged receipt of the application papers and stated that he did not intend to sign and return the documents. Accompanying the affidavit was the following supporting documentary evidence: 1) the cover letters of July 19, 2000, and August 21, 2000, showing that in each mailing the declaration and application papers were being transmitted to the non-signing inventor at his last known address, return receipt requested; and 2) certified mail return receipts signed by inventor Yung on July 22, 2000, and August 24, 2000 respectively.

The declaration filed October 6, 2000, and the petition have been reviewed and found in compliance with 37 C.F.R. §1.47(a). The petition did not include a check for the petition fee, as indicated. The petition fee (\$130.00) is being charged to Deposit Account No. 01-0467, as authorized.

This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(a), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The power of attorney given in the declaration, and subsequent change of correspondence address requested on the patent application transmittal, are both acknowledged and made of record.

The application file is being forwarded to the Office of Initial Patent Examination for completion of pre-examination processing.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Nancy Johnson at (703) 305-0309.


Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy